Mona L. Burton, #5399
Doyle S. Byers, #11440
Ellen E. Ostrow, #14743
HOLLAND & HART LLP
222 S. Main Street, Suite 2200
Salt Lake City, UT 84101
Telephone: (801) 799-5800
Fax: (801) 799-5700
mburton@hollandhart.com
dsbyers@hollandhart.com
eeostrow@hollandhart.com
Counsel for Official Committee of Unsecured Creditors

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH

In re:	Bankruptcy No. 18-25116
THE FALLS EVENT CENTER LLC,	Chapter 11
Debtor.	Honorable R. Kimball Mosier

JOINDER AND OBJECTION TO UNITED STATES TRUSTEE'S MOTION FOR THE APPOINTMENT OF A CHAPTER 11 TRUSTEE

The Official Committee of Unsecured Creditors (the "Committee") appointed in the case of The Falls Event Center LLC (the "Debtor"), by and through its counsel, hereby joins in the Debtor's objection and submits this objection (the "Objection") to the U.S. Trustee's *Motion for the Appointment of a Chapter 11 Trustee* [Docket No. 29] (the "Motion").[1] In support of the Objection, the Committee states as follows:

INTRODUCTION

With Steven L. Down's removal from any management position prepetition and his

[1] The U.S. Trustee allowed the Committee an extension through August 21, 2018 to file an objection, but discovery is ongoing. The Committee reserves the right to supplement its Objection through the close of discovery on this matter.

inability to exercise any control or authority over the Debtor, the Committee supports the reorganization efforts of the Debtor and objects to the appointment of a Chapter 11 trustee. The Debtor has already taken adequate steps to entirely alleviate any concerns raised by the U.S. Trustee, but it did so months ago and now has the benefit of that momentum. Moreover, the Committee will act as an additional backstop to monitor this case. Appointing a Chapter 11 trustee now will only serve to delay this case and needlessly increase the costs.

The Debtor appointed Brooks Pickering as the chief restructuring officer prior to the Petition Date and will seek the appointment of Gil Miller of Rocky Mountain Advisory as the Debtor's Chief Financial Adviser. Down has not exercised any control over the Debtor or its subsidiaries since before the commencement of this case, and Miller will have autonomy to act in the best interest of the Debtor until a Board of Members is established. The Committee is satisfied that the Debtor and Pickering are independent from Down and, with the addition of Miller, the Debtor is able to fulfill its obligations under the Bankruptcy Code.

In addition, the Committee was formed on July 24, 2018, and only three days later the U.S. Trustee filed the Motion. Since its formation, the Committee has monitored and will continue to closely monitor the administration of this case and investigate the acts, conduct, assets, liabilities, and financial condition of the Debtor. It will also participate in the formulation of a plan of reorganization. With an active Committee, the retention of Gil Miller as the Chief Financial Adviser, the reporting requirements of the Bankruptcy Code, and the monitoring by the U.S. Trustee, a Chapter 11 trustee is an unnecessary, substantial expense that will only serve to delay the Debtor's reorganization.

Ultimately, under 11 U.S.C. § 1104(a), the U.S. Trustee must demonstrate that cause

exists to appoint a Chapter 11 trustee or that the appointment is in the best interest of creditors and the estate. The U.S. Trustee fails to carry his burden because (i) Down has not been involved in the Debtor's management since before the filing of this case, (ii) current management is independent and properly insulated from Down, (iii) the Debtor is reconciling its intercompany claims (which the Committee will monitor), (iv) the current management has substantial knowledge of the Debtor's operations and has already taken significant steps to improve profitability, (v) Pickering has relevant industry experience, and (vi) creditors of the Debtor are working with and continue to work with current management. Further, the SEC Complaint (defined below) specifically alleges that Debtor's executive team properly informed Down of the Debtor's financial condition. Although Down neither admits or denies the allegations, there is no allegation that the Debtor's management, other than Down, violated any securities laws.[2] Current management, which excludes Down and includes an independent chief restructuring officer, has extensive knowledge of the Debtor and is working to properly reorganize the Debtor. Thus, the U.S. Trustee fails to carry his burden, and the Committee requests the Court deny the Motion.

BACKGROUND

1. On July 11, 2018 (the "Petition Date") the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Utah, Central Division (the "Bankruptcy Court"), Case No. 18-25116 (this "Bankruptcy Case").

[2] There were concerns that additional members of management may have had some involvement with the allegations against Down; however, these individuals have also been removed from any involvement with the Debtor.

2. Since the Petition Date, the Debtor has maintained possession of its property and is operating and managing its business as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

3. No examiner or trustee has been appointed in this Bankruptcy Case.

4. On July 24, 2018, the Office of the United States Trustee appointed the Committee as an official committee to represent the interests of unsecured creditors of the Debtor, pursuant to § 1102 of the Bankruptcy Code.

A. The Motion

5. Sixteen days after the Petition Date, the U.S. Trustee (the "Trustee") filed the Motion.

6. The Trustee alleges that under § 1104(a)(1) cause exists to appoint a Chapter 11 trustee for the following reasons:

(a) The Debtor and its wholly-owned subsidiaries comingle funds and have intercompany claims.

(b) The Debtor and Down were sued by the Securities and Exchange Commission ("SEC") and consented to a final judgment (the "Final Judgment"), which restrained both the Debtor and Down from violating Section 17(a)(2) of the Securities Act of 1933, and Down subsequently selected Brooks Pickering as the Debtor's Chief Restructuring Officer, thus Pickering is tainted by the allegations against Down.

(c) The Debtor did not close its pre-petition bank account with Bank of the West until July 18, 2018, during which time secured creditors withdrew approximately $98,000.

7. In the alternative, the Trustee requests the Court appoint a Chapter 11 trustee pursuant to 11 U.S.C. § 1104(a)(2) because the Trustee believes, without explanation, it would be in the best interest of creditors.

B. The SEC Complaint and Final Judgment

8. On May 10, 2018, the SEC filed a complaint (the "SEC Complaint") against the Debtor and its founder, Steven L. Down, in the United States District Court, District of Utah, Central Division. A true and correct copy of the SEC Complaint is attached hereto as **Exhibit A**.

9. The SEC Complaint alleges, in part, that Down, despite information provided by his executive team, was at least negligent in making representations to investors regarding the profitability of individual event centers. *See* Complaint, ¶¶ 36–40.

10. Down and the Debtor consented to entry of the Final Judgment. The Final Judgment is attached hereto as **Exhibit B**.

11. The Final Judgment incorporates by reference the Consents of Defendant Steven L. Down and the Debtor. True and correct copies of the Consents are attached hereto as **Exhibit C**.

12. Under 17 C.F.R. § 202.5(e), it is the SEC's policy that a defendant consenting to judgment may not deny the allegations in the complaint, but the defendant may claim that it neither admits or denies the SEC's allegations. 17 C.F.R. § 202.5(e) ("[The Commission] hereby announces its policy not to permit a defendant . . . to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint . . . . In this regard, the Commission believes that a refusal to admit the allegations is equivalent to a denial, unless the defendant . . . states that he neither admits nor denies the allegations.").

13. By consenting to the Final Judgment, the Debtor and Down, per the SEC's policy, agreed not to make public statements that deny the SEC's allegations, but nothing in the Consents or the Final Judgment affect the Debtor or Down's rights "to take legal or factual positions in litigation or other legal proceedings in which the [SEC] is not a party." *See* Consents, ¶ 11.

C. Retention of Brooks Pickering and Scott Viernes

14. After entry of the Final Judgment, in June 2018, Brooks Pickering and Scott Viernes, who the Committee is satisfied had no previous relationship with the Debtor, were retained by the Debtor as strategic consultants on growth. *See, e.g.*, Declaration of Brooks Pickering, ¶¶ 5–15 filed on August 20, 2018.

15. Pursuant to the Debtor's Consent of Sole Member of The Falls Event Center, LLC dated June 28, 2018 (the "Resolution"), Down stepped down as the Chief Executive Officer of the Company, and Pickering was installed as the Chief Restructuring Officer. *See* Pickering Declaration at Exhibit A.[3]

16. After Committee members and its counsel met with Messrs. Pickering and Viernes on separate occasions, and the Committee's counsel attended the 2004 examinations of Messrs. Pickering, Viernes, Neal Bergstrom (Director of Planning and Business Operations of the Debtor), and Nathan Larsen (the Debtor's Controller), the Committee is satisfied that Down, prior to the Petition Date, ceased any managerial involvement with the Debtor and has no authority to bind or act on behalf of the Debtor.

[3] The Debtor subsequently also removed David Down, Steve Down's brother, as a manager of the Debtor. *See* Pickering Declaration at Exhibit B.

17. The Committee is satisfied that Pickering is acting independently from Down and has sufficient industry experience to serve as the manager of the Debtor until a Board of Members is elected.

18. The Committee is also satisfied that both Bergstrom and Larsen have an intimate knowledge of the Debtor's operations to assist in moving this case forward.

ARGUMENT

The appointment of a Chapter 11 trustee is an extraordinary remedy, and there is a strong presumption that a debtor should remain in possession. *In re Plaza de Retiro, Inc.*, 417 B.R. 632, 640 (Bankr. D.N.M. 2009) (citing *Oklahoma Refining Co. v. Blaik (In re Oklahoma Refining Co.)*, 838 F.2d 1133, 1136 (10th Cir. 1988)). Section 1104(a) of the Bankruptcy Code provides for the appointment of a Chapter 11 trustee (1) for "cause," and (2) if such appointment is in the interests of creditors and other interests of the estate. *See* 11 U.S.C. § 1104(a). The party seeking the appointment of a Chapter 11 trustee must show by clear and convincing evidence that either "cause" exists under § 1104(a)(1) or appointment is in the best interest of creditors under § 1104(a)(2). *See In re The 1031 Tax Group, LLC*, 374 B.R. 78, 85 (Bankr. S.D.N.Y. 2007).[4] The inquiry under § 1104(a) is fact intensive, and a court has discretion to determine whether conduct rises to the level of "cause" or whether the appointment of a trustee would serve the interest of parties and the estate. *In re Mako, Inc.*, 102 B.R. 809, 813 (Bankr. E.D. Okla. 1988) (finding in

[4] *See also In re TS Industries, Inc.*, 125 B.R. 638, 643 (Bankr. D. Utah 1991) (applying clear and convincing standard); *In re Mako, Inc.*, 102 B.R. 809, 811–12 (Bankr. E.D. Okla. 1988) (same). *But see In re Golden Park Estates, LLC*, 2015 WL 3643479 (Bankr. D.N.M. June 11, 2015) (noting that the Tenth Circuit Court of Appeals has not decided on the standard of proof and that a preponderance of the evidence standard may apply under § 1104). The Tenth Circuit Court of Appeals has not yet ruled on whether the burden of proof under § 1104(a) is clear and convincing or a preponderance of the evidence. The majority of courts, including a Utah court, have applied the clear and convincing standard, which is appropriate as the appointment of a Chapter 11 trustee is an extraordinary remedy. The Committee contends, however, whether the standard is clear and convincing or a preponderance of evidence, the Trustee fails to satisfy his burden.

that case that "the interest of creditors is not served by draining the assets of the estate in the costly appointment of a Trustee"); *see also The 1031 Tax Group, LLC*, 374 B.R. at 90. When the U.S. Trustee brings a motion under § 1104(e), the legal standard required under § 1104(a) does not change. *See The 1031 Tax Group, LLC*, 374 B.R. at 87 (finding that if a U.S. Trustee demonstrates a *prima facie* case, the burden then shifts to the parties opposing the motion "to demonstrate that the [current] management is unconflicted by any association with the tainted members of the governing body that made the selection or appointment").

"Cause" under § 1104(a)(1) includes "fraud, dishonesty, incompetence or gross mismanagement of the debtor's affairs by *current management*." *The 1031 Tax Group, LLC*, 374 B.R. at 86 (emphasis in original). Although the conduct of prepetition management may be reviewed by a court, "a court's focus is on the debtor's current management, not the misdeeds of past management." *Id.* And "the fact that prior management of the debtor is guilty of fraud, dishonesty, incompetence, or gross mismanagement does not necessarily provide grounds for the appointment of a trustee under section 1104(a)(1), as long as the court is satisfied that current management is free from the taint of prior management." *In re Microwave Products of America, Inc.*, 102 B.R. 666, 671 (Bankr. W.D. Tenn. 1989) ("[T]he mere fact that a corporate debtor engages in a business relationship with a subsidiary or a related company does not automatically create a conflict of interest."). A "court must find something beyond simple mismanagement in order to appoint a trustee for cause. In fact, gross mismanagement must be found." *Id.* at 676.

In determining whether to appoint a Chapter 11 trustee under § 1104(a)(2), a court applies a flexible standard and "look[s] to the practical realities and necessities and appoint[s] a trustee when it is in everyone's best interest." *Plaza de Retiro, Inc.*, 417 B.R. at 640. Courts

consider four factors in determining whether to appoint a trustee under § 1104(a)(2): "(1) the trustworthiness of the debtor; (2) the debtor in possession's past and present performance and prospects for the debtor's rehabilitation; (3) the confidence—or lack thereof—of the business community and of creditors in present management; and (4) the benefits derived by the appointment of a trustee, balanced against the costs of appointment." *Id.* A court must determine whether the appointment of a Chapter 11 trustee will "accomplish the goals of the chapter 11 plan more efficiently and effectively than present management." *Microwave Products of America, Inc.*, 102 B.R. at 672.

In *In re The 1031 Tax Group, LLC*, 374 B.R. 78 (Bankr. S.D.N.Y. 2007), the court denied the U.S. Trustee's motion to appoint a Chapter 11 trustee, where the sole member and manager of the debtors allegedly diverted funds from the debtors to other entities, also wholly-owned by the sole member and manager. Prepetition, the sole manager executed a resolution appointing a chief restructuring officer and delegated his authority to appoint an independent manager to the chief restructuring officer. *Id.* at 84–85. The Court found that these actions combined with additional steps taken to "effectively insulate current management from [the prepetition sole member's] management authority and control" were sufficient to overcome the U.S. Trustee's *prima facie* case, and the ultimate burden shifted to the U.S. Trustee who failed to establish "cause" to appoint a Chapter 11 trustee. *Id.* at 89–90. The court then reviewed whether appointment of a Chapter 11 trustee was in the best interest of creditors and found, based on the circumstances of the case, including where the debtors and creditors committee were moving the case forward, appointment was not appropriate. *Id.* at 91. Importantly, the court noted that "[w]here a case has an active creditors committee functioning effectively and working well with

the debtors, . . . there is little benefit in appointing a trustee." *Id.*

In *In re American Natural Resources, LLC*, No. 15-80355, 2015 WL 4480361, at *1 (Bankr. E.D. Okla. July 21, 2015), the court denied the U.S. Trustee's motion to appoint a Chapter 11 trustee, finding that the U.S. Trustee provided insufficient evidence to justify the extraordinary remedy. There, the U.S. Trustee based his motion on a prepetition arbitration award that found the debtor had engaged in self-dealing, provided false and misleading information, and violated contractual duties of good faith and fair dealing. *See id.* at *1. The arbitration award specifically noted that it did not find tort or statutory liability against the debtor. *Id.* The U.S. Trustee filed his motion before the debtor filing its statements and schedules and before the debtor's 341 meeting of creditors. *Id.* at *2. Also, prior to the filing, the debtor made loans to and purchased a work vehicle for a company wholly-owned by family members of the debtor's sole member. When questioned whether the loans would be repaid or whether the debtor would sue to collect the debt, the debtor testified that the recipient company had no current ability to repay the debt, but the debtor believed the company could make payments in the future. *Id.*

The court was not convinced that the U.S. Trustee met his burden under § 1104(e) based solely on the arbitration award where there was no criminal conduct alleged or presented to the court; however, it proceeded with its analysis under § 1104(a). *Id.* at *4. Specifically noting the early stage of the case, the court found insufficient evidence to support the appointment of a Chapter 11 trustee. The court acknowledged that "there could be issues" regarding the debtor's relationship with the recipient company but explained that "[a]t this stage of the case, the Court can only speculate as to what plan [the debtor] will propose and how these potential conflicts and

issues will be addressed by [the debtor's] management." *Id.* at *6.

Here, similar to *The 1031 Tax Group*, while the Committee acknowledges the Final Judgment may cast doubt on whether *Down* should remain in control of the Debtor,[5] the fact remains the Debtor has taken steps to effectively insulate current management from Down. The Committee is satisfied that within a matter of weeks of Pickering's retention, the Debtor properly entered into the Resolution removing Down and appointing Pickering as the Chief Restructuring Officer. *See* Pickering Declaration, Exhibit A. Both Pickering and Viernes testified at their 2004 examinations that management does not take and has not taken any direction from Down since he was removed from any position of authority or control over the Debtor (or Even Stevens). Also, Pickering had no previous connection with the Debtor, Even Stevens, or Down prior to his retention. The Debtor has taken the additional steps to retain Gil Miller of Rocky Mountain Advisory, who will have autonomy in moving the Debtor through the reorganization process. *See* Pickering Declaration, ¶¶ 27–28. The Debtor has also removed David Down, Susan Knight, and John Neubauer from any position with the Debtor, and the Committee believes the Debtor has responded appropriately to the Trustee's requests for information and removal of certain employees. Similar to *The 1031 Tax Group*, the Debtor has taken steps that resulted in new management that is free from any taint associated with Down.

The U.S. Trustee also contends that Pickering's management of Even Stevens and the

[5] Section § 1104(e) provides that the U.S. Trustee shall move for the appointment of a Chapter 11 trustee if there are "reasonable grounds to suspect" that a member of the governing body who selected the debtor's chief executive or chief financial officer "participated in actual fraud, dishonesty, or criminal conduct in the management of the debtor or the debtor's public financial reporting." There is minimal case law on the application of this provision, and it is not clear whether the Trustee establishes a *prima facie* case in this instance. First, the SEC Complaint provides that Down was at least negligent, not that he was engaged in actual fraud, dishonesty or criminal conduct in the management of the Debtor. Second, the Final Judgment and Consents provide that there are no admissions or denials of such conduct. Regardless, the Committee believes the focus of the Court's attention should be on the current management and there is no need for a mini-trial on the allegations against Down.

funds taken post-petition by secured lenders in violation of the automatic stay from the Debtor's account constitutes cause. Similar to *American Natural Resources*, here, the Trustee filed the Motion only days after the Petition Date and before the Debtor filed its Schedules and Statement of Financial Affairs. On its Statements and Schedules filed on August 15, 2018, the Debtor discloses the transfers to insiders and to Even Stevens. Although a potential conflict may arise, this is not enough to establish cause to appoint a Chapter 11 trustee – the Debtor and its management should have the opportunity to resolve any potential conflicts or issues and work to propose a plan of reorganization. As stated in *American Natural Resources*, these potential conflicts do not "justify the extraordinary remedy of appointing a trustee at this time." *American Natural Resources*, 2015 WL 4480361, at *6.

As to the bank account, the Committee is satisfied that the Debtor's management vigorously attempted to have the account frozen on the Petition Date and took additional steps until completed, despite resistance from the depository institution. It is also the Committee's understanding that the Debtor contacted the secured creditors to stop the automatic withdrawals, quickly informed the Trustee when the funds left the account, and has and will continue to demand the return of the funds, including bringing a motion for violation of the automatic stay. As explained in *Microwave Products of America*, the Court "must find something beyond simple mismanagement in order to appoint a trustee for cause. In fact, gross mismanagement must be found." 102 B.R. at 676. The funds leaving the Debtor's account post-petition when the Debtor attempted to close the account and will seek recovery of those funds, does not constitute gross mismanagement and is insufficient to establish cause to appoint a Chapter 11 trustee.

Based on the foregoing, the Trustee fails to meet his burden to establish cause to appoint

a Chapter 11 trustee under § 1104(a)(1). Alternatively, the Trustee seeks appointment of a Chapter 11 trustee under § 1104(a)(2), claiming that the appointment, without explanation, is in the best interest of creditors and parties in interest. The Committee disagrees and believes that the appointment of a Chapter 11 trustee will only serve to drain the resources of the estate and further delay a viable plan of reorganization.

Similar to *American Natural Resources*, the Committee is satisfied the Debtor's current management has a detailed and intimate knowledge of the Debtor's operations and event center industry. Pickering has an extensive background in hospitality and knowledge of restructuring. Since Pickering's appointment, Pickering and Viernes have worked closely with Neal Bergstrom, the Director of Planning and Business Operations of the Debtor, and Nathan Larsen, the Debtor's Controller. Both Bergstrom and Larsen have an intimate knowledge of the Debtor's operations. At their 2004 examinations, both Larsen and Bergstrom testified that in 2017, there was an internal push to produce profit and loss statements to understand the profitability of the event centers, and Larsen and Bergstrom worked to reduce staffing, overhaul services, and focus on the actualized revenue at the event centers. Since Pickering stepped in as the Debtor's Chief Restructuring Officer, Larsen testified that these efforts to improve the financial health of the Debtor have the full support of current management.[6]

The practical realities in this case do not justify the appointment of a Chapter 11 trustee. The Committee was appointed only three days before the Trustee filed the Motion. The Committee is and will continue to be active in this case, including investigating the acts, conduct,

[6] It is important to note that the SEC Complaint alleges that the Debtor's own accounting records indicate that the event centers were not profitable and that the management team informed Down of the same. *See* SEC Complaint, ¶¶ 5, 39. There is and was no allegation that the Debtor's management team or accounting staff engaged in any wrongful conduct and, what's more, even informed Down that the event centers were not making a profit.

and financial condition of the Debtor and working with the Debtor to formulate a viable plan of reorganization. Moreover, the Debtor has already taken action to alleviate the concerns raised by the Trustee. By the time of the hearing on this Motion, Pickering will have been with the Debtor for over three months, working to properly reorganize. With the addition of Miller and the reporting requirements under the Bankruptcy Code, the appointment of a Chapter 11 trustee will only serve to needlessly drain the Debtor's estate and cause further delay in formulating and implementing a plan of reorganization.

CONCLUSION

Based on the foregoing, the Committee respectfully requests the Court deny the Motion.

DATED: August 21, 2018

HOLLAND & HART LLP

/s/ *Ellen E. Ostrow*
Mona L. Burton
Doyle S. Byers
Ellen E. Ostrow
Attorneys for Official Committee of Unsecured Creditors, The Falls Event Center LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 21st day of August, 2018 a copy of the foregoing was served as follows:

By Electronic Service: I certify that the parties of record in this case as identified below, are registered CM/ECF users:

- James W. Anderson jwa@clydesnow.com, jritchie@clydesnow.com
- David P. Billings dbillings@fabianvancott.com, mparks@fabianvancott.com
- Laurie A. Cayton tr laurie.cayton@usdoj.gov, James.Gee@usdoj.gov; Lindsey.Huston@usdoj.gov; Suzanne.Verhaal@usdoj.gov
- Michael R. Johnson mjohnson@rqn.com, docket@rqn.com;dburton@rqn.com
- Ralph R. Mabey rmabey@kmclaw.com
- Adelaide Maudsley amaudsley@kmclaw.com, tslaughter@kmclaw.com
- Elaine A. Monson emonson@rqn.com, docket@rqn.com;pbrown@rqn.com
- Chad Rasmussen chad@alpinalegal.com, contact@alpinalegal.com
- Richard C. Terry richard@tjblawyers.com, cbcecf@yahoo.com
- United States Trustee USTPRegion19.SK.ECF@usdoj.gov
- Brent D. Wride bwride@rqn.com, docket@rqn.com;pbrown@rqn.com

/s/ *Ellen E. Ostrow*

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EXHIBIT A

Daniel J. Wadley (10358)
wadleyd@sec.gov
Amy J. Oliver (8785)
olivera@sec.gov
Alison J. Okinaka (7954)
okinakaa@sec.gov
Attorneys for Plaintiff
Securities and Exchange Commission
351 South West Temple, Suite 6.100
Salt Lake City, Utah 84101
Tel. 801-524-5796
Fax: 801-524-3558

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

SECURITIES AND EXCHANGE COMMISSION, PLAINTIFF, v. THE FALLS EVENT CENTER, LLC and STEVEN L. DOWN, an individual, DEFENDANTS.	**COMPLAINT** Case No.: 2:18-cv-00382-PMW Magistrate Judge: Paul M. Warner

Plaintiff, Securities and Exchange Commission (the "Commission"), for its Complaint against defendants The Falls Event Center, LLC ("The Falls") and Steven L. Down ("Down") (collectively, "Defendants") alleges as follows:

INTRODUCTION

1. This matter arises out of misrepresentations in the offer or sale of securities by The Falls and Down, its CEO and founder. Down has raised approximately $120 million from approximately 300 investors for The Falls since 2011.

2. The Falls builds and operates small event centers that can be rented for events such as parties and weddings. Currently The Falls has eight open and operating event centers in five states.

3. The Falls offers several investment options to prospective investors. Most investors have invested in The Falls' convertible secured promissory notes (the "Notes"). The investments offered by The Falls, including the Notes, are securities.

4. Down has solicited investments in The Falls by, among other things, making presentations to groups of prospective investors during continuing education seminars that he sponsors for dentists.

5. In his presentations Down consistently represented that some or all of the event centers were and continued to be profitable. Certain of Down's representations concerning the individual event centers were untrue, however. The Falls' own accounting records indicate that, from inception through September 2017, the event centers have never been profitable on the basis of generally accepted accounting principles ("GAAP").

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction by authority of Sections 20 and 22 of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. §§ 77t and 77v]. Defendants, directly and indirectly, singly and in concert, have made use of the means and instrumentalities of interstate commerce and the mails in connection with the transactions, acts and courses of business alleged herein, certain of which have occurred within the District of Utah.

7. Venue for this action is proper in the District of Utah under Section 22(a) of the Securities Act [15 U.S.C. § 77v(a)], because certain of the transactions, acts, practices, and

courses of business alleged in this Complaint took place in this district and because Defendants reside in and transact business in this district.

8. Defendants, unless restrained and enjoined by this Court, will continue to engage in the transactions, acts, practices, and courses of business alleged herein and in transactions, acts, practices, and courses of business of similar purport and object.

9. Defendants' conduct took place in connection with the offer or sale of investments, including Notes, issued by The Falls, which are securities.

DEFENDANTS

10. The Falls Event Center, LLC is a Utah limited liability company with its principal office in West Jordan, Utah. It was formed by Down in 2011. The Falls opened its first event center in St. George, Utah in the fall of 2013. Its most recent center was opened in McMinnville, Oregon in March 2017.

11. Steven L. Down, 60, is a resident of Draper, Utah. Down is the CEO of The Falls. From 2011 to the present, Down offered and sold investments to individuals either individually or through his entity The Falls.

STATEMENT OF FACTS

12. Down formed The Falls in 2011 as a Utah LLC.

13. Down is the CEO of The Falls. He directs The Falls' operations and makes decisions regarding how The Falls raises and spends investor funds.

14. The Falls opened its first event center in the fall of 2013 and currently has eight open and operating event center locations. The Falls typically purchases the land and constructs the event centers itself. The Falls also owns approximately 13 parcels of vacant land on which it plans to build new event centers.

15. The currently open and operating locations are in Salt Lake City and St. George, Utah; Elk Grove, Fresno and Roseville, California; Littleton, Colorado; McMinnville, Oregon; and Gilbert, Arizona.

16. The purchase and construction of the event centers is and has been financed through loans made by private investors, bearing interest rates of 10 to 14% per year. The Falls referred to these loans as "hard money" loans. The Falls obtained hard money loans because it was not able to obtain traditional bank financing at lower interest rates.

17. The hard money loans are secured by mortgages on the event centers. As of September 30, 2017 the principal amount of these loans was $33.5 million.

18. Down has located prospective investors by presenting his sales pitch for The Falls at continuing education seminars that he sponsored for dentists. During the seminar lunch break, Down gave his presentation regarding an investment in The Falls. Down's presentation, and the accompanying PowerPoint, has remained essentially the same for years.

19. In his presentation, Down always represented that many if not all of the event centers were profitable even before they opened, because they were accepting event bookings before they opened. Down represented that that the event centers continued to be profitable after they opened. Down represented to investors that, after The Falls had 12 centers, it would be able to obtain institutional loans to replace the hard money loans.

20. In his presentation, Down always stated that The Falls would have 200 event centers by 2022. He always represented that each event center would earn gross revenue of $1 million per year and cover expenses of approximately $650,000, leaving profit of approximately $350,000, or 35%, per year.

21. In his presentation, Down always stated that therefore the 200 projected centers would bring in net income of $70 million per year, and that The Falls would achieve a price/earnings ration of 40, causing it to be worth $2.8 billion by the time it has 200 centers in 2022. He always forecasts that, after 2022, the company will either go public or be bought out.

22. Prospective investors were often flown to Salt Lake City or to one of the other event centers, and given an opportunity to meet the executive team of The Falls. They were provided with the company's private placement memorandum, its current Business Plan Summary and its most recent quarterly investor newsletter.

23. Investors usually invested in The Falls' Notes. As of September 30, 2017 The Falls had approximately $78 million in Notes outstanding. As of that date, accrued interest expense related to these Notes on the company's profit and loss statement was nearly $2 million.

24. After investing, investors did not receive any updated disclosures from The Falls other than a quarterly investor newsletter that often included a letter from Down on recent events.

25. The Falls maintained its books using QuickBooks software, which generates financial statements in accordance with GAAP. Beginning in approximately 2011, The Falls' chief financial officer ("CFO") provided Down with reports each month that included GAAP profit and loss statements for the individual event centers.

26. In 2014, Down and other company executives decided to generate a new type of monthly profit and loss statement for the event centers, using the figure for event bookings instead of the GAAP revenue figure. They called these statements "modified accrual" profit and loss statements.

27. Accordingly, at the direction of Down and the other executives, the CFO began preparing monthly profit and loss statements using bookings instead of GAAP revenue.

28. The CFO e-mailed these statements in internal reports to Down and other executives almost every month from 2014 until the CFO left the company in March 2017.

29. In his presentations to investors, Down did not disclose that The Falls was using "modified accrual" profit and loss statements.

30. In the first half of 2016 the CFO attended an investor presentation by Down. After hearing the presentation he told Down that Down had to stop telling prospective investors that the centers were making a profit, because they were not doing so.

MATERIAL MISREPRESENTATIONS AND OMISSIONS

31. In a newsletter The Falls sent out between January and August 2014, Down stated: "The Falls at St. George is now profitable and gaining momentum. A monthly return on revenue of 35% is looking possible sometime this year!" According to The Falls' QuickBooks, however, St. George experienced a net operating loss in every month but one from January to August 2014. Over this period St. George had a net operating loss of $81,531. According to the "modified accrual" P&Ls, from January to August 2014, St. George had a net operating loss of $57,035, with only three out of eight months showing net profit.

32. In a letter to investors included in an October 2015 investor newsletter, Down stated, "[w]e currently have five event centers operating; each one operating profitably." These five would have been St. George, Elk Grove (two buildings) and Fresno (two buildings). Through September 2015, however, QuickBooks shows that St. George lost $104,757; Elk Grove lost $657,261; and Fresno lost $102,682. On a "modified accrual" basis, this statement is false as to St. George and Elk Grove.

33. Between February 2016 and December 2016, Down told four investors that the centers were profitable. On a GAAP basis, for the 2016 year, however, the company's QuickBooks reflects that all centers had net losses. On a "modified accrual" basis, for the 2016 year, only two out of the eight centers were profitable.

34. In a presentation to a group of investors in January 2017 in Seattle, Down stated: ". . . we went into Elk Grove and built these two buildings. These two buildings were profitable in month one. We're getting about 35 percent return this year." On a GAAP basis, and even on a "modified accrual" basis, Down's claim that Elk Grove was "profitable in month one" was incorrect. Elk Grove opened in November 2014. For its first month, its net loss was $114,268. In its second month, its net loss was $84,186. On a "modified accrual" basis, Elk Grove lost $67,689 in its first month and lost $52,813 in its second.

35. In March 2017, Down told an investor that "the Fresno buildings were profitable in the first month." On a GAAP basis, this statement is incorrect. Fresno opened in August 2015. In its first month, its net loss was $52,434. Only on the "modified accrual" basis is this statement correct. On that basis Fresno had net income of $12,914 in its first month.

DOWN'S NEGLIGENCE

36. Down was at least negligent in making representations to investors regarding the profitability of individual event centers. Down was the CEO of The Falls and had ready access at all times to all its financial information. In fact, profit and loss information was regularly provided to him by executives at The Falls.

37. From the inception of The Falls until at least 2014, The Falls' CFO provided Down with a QuickBooks profit and loss statement for the event centers, prepared on a GAAP basis.

38. Beginning in 2014 and continuing until March 2017, The Falls' CFO provided Down with "modified accrual" profit and loss statements for the event centers by e-mail every month.

39. From the first half of 2016 forward, Down was informed on numerous occasions by members of his executive team at The Falls that the event centers were not profitable. They informed Down that the centers were not close to achieving $1 million in annual gross revenue or 35% profit per center, as Down was representing to investors. They informed Down that his event center model was unsustainable because of the huge amount of mortgage debt on the event centers and because of the tens of millions of dollars of Note principal and accrued interest.

40. Down was at least negligent in not reviewing, or assimilating, the profit and loss information provided to him by The Falls' CFO, while continuing to make false representations to investors that the event centers were profitable.

41. In his presentations to investors, Down did not disclose that The Falls was using "modified accrual" profit and loss statements. Down was at least negligent in not making these disclosures to investors.

42. Either the GAAP profit and loss statements or the "modified accrual" profit and loss statements would have shown Down that he was mistaken in touting the profitability of the event centers in the course of raising money from investors.

FIRST CAUSE OF ACTION
FRAUD IN THE OFFER OR SALE OF SECURITIES
Violations of Sections 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2)]
by The Falls and Down

43. The Commission realleges and incorporates by reference the allegations contained in paragraphs 1 through 42 above.

44. Defendants, by engaging in the conduct described above, directly and indirectly, in the offer and sale of securities, by the use of the means or instruments of transportation or communication in interstate commerce or by use of the mails, engaged in transactions, practices, or courses of business which operate or would operate as a fraud or deceit upon the purchaser.

45. By reason of the foregoing, Defendants, directly or indirectly, violated, and unless restrained and enjoined will continue to violate, Section 17(a)(2) of the Securities Act [15 U.S.C. § 77q(a)(2].

RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court:

I.

Issue findings of fact and conclusions of law that Defendants committed the violations charged herein.

II.

Issue in a form consistent with Rule 65(d) of the Federal Rules of Civil Procedure orders that temporarily, preliminarily, and permanently enjoin Defendants and their officers, agents, servants, employees, attorneys, and accountants, and those persons in active concert or participation with any of them, who receive actual notice of the order by personal service or otherwise, and each of them, from engaging in transactions, acts, practices, and courses of business described herein, and from engaging in conduct of similar purport and object in violation of Section 17(a)(2) of the Securities Act.

III.

Enter an order directing Defendants, and each of them, to pay civil money penalties pursuant to Section 20(d) of the Securities Act.

IV.

Retain jurisdiction of this action in accordance with the principles of equity and the Federal Rules of Civil Procedure in order to implement and carry out the terms of all orders and decrees that may be entered, or to entertain any suitable application or motion for additional relief within the jurisdiction of this Court.

Dated May 10, 2018.

Respectfully submitted,

/s/ Daniel J. Wadley_____
Daniel J. Wadley
Amy J. Oliver
Alison J. Okinaka
Attorneys for Plaintiff
Securities and Exchange Commission

EXHIBIT B

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. THE FALLS EVENT CENTER, LLC, and STEVEN L. DOWN, Defendants.	Case No.: 2:18-cv-00382-JNP Judge Jill N. Parrish

FINAL JUDGMENT AS TO DEFENDANTS THE FALLS EVENT CENTER, LLC AND STEVEN L. DOWN

The Securities and Exchange Commission (the "SEC") having filed a complaint and Defendants The Falls Event Center, LLC and Steven L. Down (collectively, "Defendants") having entered a general appearance; consented to the Court's jurisdiction and the subject matter of this action; consented to entry of this Final Judgment without admitting or denying the allegations of the complaint (except as to jurisdiction and as otherwise provided herein in paragraph V); waived findings of fact and conclusions of law; and waived any right to appeal from this Final Judgment:

I.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that Defendants are permanently restrained and enjoined from violating Section 17(a)(2) of the Securities Act of 1933 (the "Securities Act") [15 U.S.C. § 77q(a)(2)] in the offer or sale of any security by the use

of any means or instruments of transportation or communication in interstate commerce or by use of the mails, directly or indirectly, to obtain money or property by means of any untrue statement of a material fact or any omission of a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, as provided by Federal Rule of Civil Procedure 65(d)(2), the foregoing paragraph also binds the following who receive actual notice of this Final Judgment by personal service or otherwise: (a) Defendants' officers, agents, servants, employees, and attorneys; and (b) other persons in active concert or participation with Defendants or with anyone described in (a).

II.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Defendant Steven L. Down shall pay a civil penalty in the amount of $150,000 to the SEC pursuant to Section 20 [15 U.S.C. § 77t] of the Securities Act. Down shall make this payment pursuant to the terms of the payment schedule set forth in paragraph III below after entry of this Final Judgment.

Down may transmit payment electronically to the SEC, which will provide detailed ACH transfer/Fedwire instructions upon request. Payment may also be made directly from a bank account via Pay.gov through the SEC website at http://www.sec.gov/about/offices/ofm.htm. Down may also pay by certified check, bank cashier's check, or United States postal money order payable to the SEC, which shall be delivered or mailed to

Enterprise Services Center
Accounts Receivable Branch
6500 South MacArthur Boulevard
Oklahoma City, OK 73169

and shall be accompanied by a letter identifying the case title, civil action number, and name of this Court; Down as a defendant in this action; and specifying that payment is made pursuant to

this Final Judgment.

Down shall simultaneously transmit photocopies of evidence of payment and case identifying information to the SEC's counsel in this action. By making this payment, Down relinquishes all legal and equitable right, title, and interest in such funds and no part of the funds shall be returned to Down. The SEC shall send the funds paid pursuant to this Final Judgment to the United States Treasury. Down shall pay post-judgment interest on any delinquent amounts pursuant to 28 U.S.C. § 1961.

III.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Down shall pay the penalty due of $150,000 in three installments to the SEC according to the following schedule: (1) $50,000 within 90 days of entry of this Final Judgment; (2) $50,000 within 150 days of entry of this Final Judgment; and (3) $50,000 within 210 days of entry of this Final Judgment. Payments shall be deemed made on the date they are received by the SEC and shall be applied first to post judgment interest, which accrues pursuant to 28 U.S.C. § 1961 on any unpaid amounts due after 14 days of the entry of the Final Judgment. Prior to making the final payment set forth herein, Down shall contact the staff of the SEC for the amount due for the final payment.

If Down fails to make any payment by the date agreed and/or in the amount agreed according to the schedule set forth above, all outstanding payments under this Final Judgment, including post-judgment interest, minus any payments made, shall become due and payable immediately at the discretion of the staff of the SEC without further application to the Court.

IV.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Defendants' respective consents are incorporated herein with the same force and effect as if fully set forth herein, and that Defendants shall comply with all of the undertakings and agreements set forth therein.

V.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that, solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. § 523, the allegations in the complaint are true and admitted by Defendants, and further, any debt for civil penalty or other amounts due by Defendant Steven L. Down under this Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendants of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. § 523(a)(19).

VI.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that this Court shall retain jurisdiction of this matter for the purposes of enforcing the terms of this Final Judgment.

Dated: 11 May 2018

Jill N. Parrish

U.S. District Judge Jill N. Parrish

EXHIBIT C

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. The Falls Event Center, LLC and Steven L. Down, Defendants.	Case No.: 2:18-cv-00382-PMW Magistrate Judge: Paul M. Warner

CONSENT OF DEFENDANT THE FALLS EVENT CENTER, LLC

1. Defendant The Falls Event Center, LLC ("Defendant") waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendants and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as provided herein in paragraph 11 and except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things, permanently restrains and enjoins Defendant from violations of Section 17(a)(2) [15 U.S.C. § 77q(a)(2)] of the Securities Act of 1933 ("Securities Act").

3. Defendant agrees that it shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further

agrees that it shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission, within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims

asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that it shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies the allegations." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the

complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees, expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 12-21-2017

THE FALLS EVENT CENTER, LLC

By: Steven L. Down

Title: CEO

On December 21, 2017, Steven L. Down, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent with full authority to do so on behalf of The Falls Event Center, LLC as its _____.

NDENYI EGBUNIKE
Commission # 2129712
Notary Public - California
Los Angeles County
My Comm. Expires Nov 6, 2019

Notary Public
Commission expires: November 6 2019

Approved as to form:

Daniel Hill
Snow, Christensen & Martineau
10 Exchange Place
Salt Lake City, Utah 84111
Attorney for Defendant

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH

SECURITIES AND EXCHANGE COMMISSION, Plaintiff, v. The Falls Event Center, LLC and Steven L. Down, Defendants.	Case No.: 2:18-cv-00382-PMW Magistrate Judge: Paul M. Warner

CONSENT OF DEFENDANT STEVEN L. DOWN

1. Defendant Steven L. Down ("Defendant") waives service of a summons and the complaint in this action, enters a general appearance, and admits the Court's jurisdiction over Defendant and over the subject matter of this action.

2. Without admitting or denying the allegations of the complaint (except as provided herein in paragraph 11 and except as to personal and subject matter jurisdiction, which Defendant admits), Defendant hereby consents to the entry of the final Judgment in the form attached hereto (the "Final Judgment") and incorporated by reference herein, which, among other things:

(a) permanently restrains and enjoins Defendant from violations of Section 17(a)(2) [15 U.S.C. § 77q(a)(2)] of the Securities Act of 1933 ("Securities Act"); and

(b) orders Defendant to pay a civil penalty over time in the amount of $150,000 under Section 20 [15 U.S.C. § 77t] of the Securities Act.

3. Defendant agrees that he shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source, including but not limited to payment made

pursuant to any insurance policy, with regard to any civil penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors. Defendant further agrees that he shall not claim, assert, or apply for a tax deduction or tax credit with regard to any federal, state, or local tax for any penalty amounts that Defendant pays pursuant to the Final Judgment, regardless of whether such penalty amounts or any part thereof are added to a distribution fund or otherwise used for the benefit of investors.

4. Defendant waives the entry of findings of fact and conclusions of law pursuant to Rule 52 of the Federal Rules of Civil Procedure.

5. Defendant waives the right, if any, to a jury trial and to appeal from the entry of the Final Judgment.

6. Defendant enters into this Consent voluntarily and represents that no threats, offers, promises, or inducements of any kind have been made by the Commission or any member, officer, employee, agent, or representative of the Commission to induce Defendant to enter into this Consent.

7. Defendant agrees that this Consent shall be incorporated into the Final Judgment with the same force and effect as if fully set forth therein.

8. Defendant will not oppose the enforcement of the Final Judgment on the ground, if any exists, that it fails to comply with Rule 65(d) of the Federal Rules of Civil Procedure, and hereby waives any objection based thereon.

9. Defendant waives service of the Final Judgment and agrees that entry of the Final Judgment by the Court and filing with the Clerk of the Court will constitute notice to Defendant of its terms and conditions. Defendant further agrees to provide counsel for the Commission,

within thirty days after the Final Judgment is filed with the Clerk of the Court, with an affidavit or declaration stating that Defendant has received and read a copy of the Final Judgment.

10. Consistent with 17 C.F.R. § 202.5(f), this Consent resolves only the claims asserted against Defendant in this civil proceeding. Defendant acknowledges that no promise or representation has been made by the Commission or any member, officer, employee, agent, or representative of the Commission with regard to any criminal liability that may have arisen or may arise from the facts underlying this action or immunity from any such criminal liability. Defendant waives any claim of Double Jeopardy based upon the settlement of this proceeding, including the imposition of any remedy or civil penalty herein. Defendant further acknowledges that the Court's entry of a permanent injunction may have collateral consequences under federal or state law and the rules and regulations of self-regulatory organizations, licensing boards, and other regulatory organizations. Such collateral consequences include, but are not limited to, a statutory disqualification with respect to membership or participation in, or association with a member of, a self-regulatory organization. This statutory disqualification has consequences that are separate from any sanction imposed in an administrative proceeding. In addition, in any disciplinary proceeding before the Commission based on the entry of the injunction in this action, Defendant understands that he shall not be permitted to contest the factual allegations of the complaint in this action.

11. Defendant understands and agrees to comply with the terms of 17 C.F.R. § 202.5(e), which provides in part that it is the Commission's policy "not to permit a defendant or respondent to consent to a judgment or order that imposes a sanction while denying the allegations in the complaint or order for proceedings," and "a refusal to admit the allegations is equivalent to a denial, unless the defendant or respondent states that he neither admits nor denies

the allegations." As part of Defendant's agreement to comply with the terms of Section 202.5(e), Defendant: (i) will not take any action or make or permit to be made any public statement denying, directly or indirectly, any allegation in the complaint or creating the impression that the complaint is without factual basis; (ii) will not make or permit to be made any public statement to the effect that Defendant does not admit the allegations of the complaint, or that this Consent contains no admission of the allegations, without also stating that Defendant does not deny the allegations; (iii) upon the filing of this Consent, Defendant hereby withdraws any papers filed in this action to the extent that they deny any allegation in the complaint; and (iv) stipulates solely for purposes of exceptions to discharge set forth in Section 523 of the Bankruptcy Code, 11 U.S.C. §523, that the allegations in the complaint are true, and further, that any debt for disgorgement, prejudgment interest, civil penalty or other amounts due by Defendant under the Final Judgment or any other judgment, order, consent order, decree or settlement agreement entered in connection with this proceeding, is a debt for the violation by Defendant of the federal securities laws or any regulation or order issued under such laws, as set forth in Section 523(a)(19) of the Bankruptcy Code, 11 U.S.C. §523(a)(19). If Defendant breaches this agreement, the Commission may petition the Court to vacate the Final Judgment and restore this action to its active docket. Nothing in this paragraph affects Defendant's: (i) testimonial obligations; or (ii) right to take legal or factual positions in litigation or other legal proceedings in which the Commission is not a party.

12. Defendant hereby waives any rights under the Equal Access to Justice Act, the Small Business Regulatory Enforcement Fairness Act of 1996, or any other provision of law to seek from the United States, or any agency, or any official of the United States acting in his or her official capacity, directly or indirectly, reimbursement of attorney's fees or other fees,

expenses, or costs expended by Defendant to defend against this action. For these purposes, Defendant agrees that Defendant is not the prevailing party in this action since the parties have reached a good faith settlement.

13. Defendant agrees that the Commission may present the Final Judgment to the Court for signature and entry without further notice.

14. Defendant agrees that this Court shall retain jurisdiction over this matter for the purpose of enforcing the terms of the Final Judgment.

Dated: 12-21-2017

Steven L. Down

On December 21, 2017, Steven L. Down, a person known to me, personally appeared before me and acknowledged executing the foregoing Consent.

NDENYI EGBUNIKE
Commission # 2129712
Notary Public - California
Los Angeles County
My Comm. Expires Nov 6, 2019

Notary Public
Commission expires: November 6 2019

Approved as to form:

Daniel Hill
Snow, Christensen & Martineau
10 Exchange Place
Salt Lake City, Utah 84111
Attorney for Defendant